

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD CANTOR, IVAN) No. 97-586-KAJ
SNYDER and JAMES A.)

SCARPONE, as TRUSTEES OF)
THE MAFCO LITIGATION, and)

as Successors in Interest)
to the Marvel)

Entertainment Group,)
Inc., et al.,)

Plaintiffs,)

vs.)

RONALD O. PERELMAN, et)

al.,)

Defendants.)
-----)

VIDEOTAPED DEPOSITION OF JEFFREY L. BALIBAN

New York, New York

Tuesday, April 11, 2006

Reported by:

PENNY SHERMAN

JOB NO. 183397

<p style="text-align: right;">Page 198</p> <p>1 Baliban</p> <p>2 decisions were made, there was also potential</p> <p>3 benefits to using debt over equity?</p> <p>4 MR. GOLDWATER: Objection to form.</p> <p>5 A. I'm not aware, certainly in November of</p> <p>6 1996, of the breach of fiduciary duty. And I</p> <p>7 guess, for my -- for the purposes of my answer, I'm</p> <p>8 assuming that there was a breach of fiduciary duty.</p> <p>9 Ultimately, I understand that's up to</p> <p>10 the court. And if the court decides there was no</p> <p>11 breach of fiduciary duty, I suppose that changes</p> <p>12 the nature of this case. But for the purposes of</p> <p>13 my report, I'm assuming that there was a breach of</p> <p>14 fiduciary duty.</p> <p>15 I'm not aware of any benefit at November</p> <p>16 of 1996 that that breach of fiduciary duty caused</p> <p>17 or engendered to Marvel. And I'm not even</p> <p>18 certain -- I'd have to think about this -- even if</p> <p>19 there was benefit at some earlier time, whether or</p> <p>20 not that means a breach of fiduciary duty or the</p> <p>21 damages that flow from a breach of fiduciary duty</p> <p>22 are somehow impacted. But it's something, I guess,</p> <p>23 I'd have to think about, and it probably requires a</p> <p>24 legal analysis that I would rely on counsel to</p> <p>25 provide.</p>	<p style="text-align: right;">Page 200</p> <p>1 Baliban</p> <p>2 Q. It says, in the third to last sentence</p> <p>3 on that page, in other words, leveraged</p> <p>4 stockholders have better returns in good times than</p> <p>5 do unleveraged stockholders, but have worse returns</p> <p>6 in bad times.</p> <p>7 And over on the next page, I'll just</p> <p>8 draw your attention to another statement. It's</p> <p>9 very similar, page 399. The second sentence says,</p> <p>10 This means that the levered stockholders have</p> <p>11 better returns in good times than do unlevered</p> <p>12 stockholders, but have worse returns in bad times</p> <p>13 implying greater risk with leverage.</p> <p>14 So, in terms of a financing decision, at</p> <p>15 the time the decision is made, if you don't know</p> <p>16 for certain that bad times are ahead, it doesn't</p> <p>17 mean that you're going to damage shareholders by</p> <p>18 financing the debt versus equity; is that fair?</p> <p>19 MR. GOLDWATER: Objection.</p> <p>20 A. Well, I'm sorry. Could you give me your</p> <p>21 question one more time?</p> <p>22 Q. Let me ask it in a different way.</p> <p>23 Do you agree with the statement from</p> <p>24 this finance textbook that levered stockholders</p> <p>25 have better returns in good times than do unlevered</p>
<p style="text-align: right;">Page 199</p> <p>1 Baliban</p> <p>2 MR. LOCKWOOD: Well, let's mark Exhibit</p> <p>3 11, a document that is an excerpt from a</p> <p>4 finance textbook that you cite in your report.</p> <p>5 (Baliban Exhibit 11, Excerpt from a</p> <p>6 finance textbook, marked for identification,</p> <p>7 as of this date.)</p> <p>8 MR. GOLDWATER: Do you have a copy of</p> <p>9 that?</p> <p>10 MR. LOCKWOOD: Yeah, I do.</p> <p>11 Q. You cite in your report a textbook</p> <p>12 written by Ross, Westerfield, and Jaffe, R-O-S-S,</p> <p>13 W-E-S-T-E-R-F-I-E-L-D and J-A-F-F-E, titled</p> <p>14 Corporate Finance.</p> <p>15 A. Yes.</p> <p>16 Q. And that's a sound book in terms of</p> <p>17 setting forth basic principles of corporate</p> <p>18 finance; is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. And I just want to draw your</p> <p>21 attention -- I gave you an excerpt from it and I</p> <p>22 want to draw your attention to page 398. The</p> <p>23 bottom paragraph on that page under the heading,</p> <p>24 Risk to Equity Holders Rises With Leverage.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 201</p> <p>1 Baliban</p> <p>2 stockholders that have worse returns in bad times,</p> <p>3 implying greater risk with leverage; do you agree</p> <p>4 with that principle?</p> <p>5 A. In general, yes.</p> <p>6 Q. In 1994 and 1995, when the Marvel board</p> <p>7 was making its financing decisions, do you have a</p> <p>8 view, at that time -- did you do an analysis as to</p> <p>9 how certain its ultimate bad times in 1996 were?</p> <p>10 Let me rephrase that question. It's not</p> <p>11 a good question.</p> <p>12 Did you do a study or analysis at the</p> <p>13 time that the financing decisions were made in 1994</p> <p>14 and 1995, about how likely future bad times were</p> <p>15 for Marvel versus future good times?</p> <p>16 MR. GOLDWATER: Objection to form.</p> <p>17 A. I did not do a study of expectations of</p> <p>18 good times versus bad times. What I -- what</p> <p>19 opinion I ultimately reach is, the riskiness of</p> <p>20 returns was increased at the time that the</p> <p>21 decisions were made to sign the indenture covenants</p> <p>22 and to limit Marvel's ability to access capital</p> <p>23 markets or have typical flexibility in its</p> <p>24 financing. And because the risk was increased, the</p> <p>25 value, the expected value of those earnings would</p>

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<p style="text-align: right;">Page 202</p> <p>1 Baliban</p> <p>2 be lower.</p> <p>3 Q. We have to take a break now because of</p> <p>4 the tape. Are you done with your answer?</p> <p>5 A. I am.</p> <p>6 THE VIDEOGRAPHER: The time is 5:29 p.m.</p> <p>7 and this marks the end of Tape Number 3.</p> <p>8 (A recess was taken.)</p> <p>9 THE VIDEOGRAPHER: The time is 5:34 p.m.</p> <p>10 and this marks the beginning of Tape Number 4.</p> <p>11 Q. If you go back to the rebuttal report of</p> <p>12 Professor Holthausen, Exhibit 10.</p> <p>13 A. Okay.</p> <p>14 Q. There's another criticism that he has of</p> <p>15 your analysis, which he labels the sole causation</p> <p>16 assumption. Are you familiar with that criticism?</p> <p>17 A. I recall it. I don't know the exact</p> <p>18 paragraph.</p> <p>19 Q. It's in paragraph 9.</p> <p>20 A. Okay.</p> <p>21 Q. Why don't you take a moment to read</p> <p>22 paragraph 9.</p> <p>23 A. Okay.</p> <p>24 Q. Do you have a response to his criticism</p> <p>25 based on your sole causation assumption?</p>	<p style="text-align: right;">Page 204</p> <p>1 Baliban</p> <p>2 is, the distress that they suffer when they are too</p> <p>3 highly leveraged. There are circumstances when</p> <p>4 companies can suffer economic distress and not</p> <p>5 necessarily suffer financial distress because</p> <p>6 they're not too highly levered. There are</p> <p>7 circumstances where companies can be suffering from</p> <p>8 financial distress even though their business is</p> <p>9 good and there's no economic distress.</p> <p>10 In Marvel's case, you had both. You had</p> <p>11 economic distress. There were exogenous shocks</p> <p>12 that caused business to just take a downturn.</p> <p>13 Business did not turn out to be as good as they</p> <p>14 expected and they were suffering from financial</p> <p>15 distress.</p> <p>16 Now, Marvel's stock price went from</p> <p>17 30-something, 35 down to 4. And I'm not saying</p> <p>18 anywhere that that entire drop from \$30 -- \$35 a</p> <p>19 share down to \$4 a share is due to the indenture</p> <p>20 covenants. I'm saying, when it was 4, at the time</p> <p>21 that it was at a liquidity crisis and needed cash</p> <p>22 and could not get cash at all and had nowhere to go</p> <p>23 and nowhere to turn, the drop from \$4.62 and a half</p> <p>24 to a \$1.88 is a measure of the financial distress</p> <p>25 or the damage that the limitations that those</p>
<p style="text-align: right;">Page 203</p> <p>1 Baliban</p> <p>2 A. Well, I'm not -- I'm not sure what he's</p> <p>3 saying where he says, I don't apportion economic</p> <p>4 harm between the effect of the holding company</p> <p>5 notes and the effect of Marvel's capital structure</p> <p>6 decisions, absent holding company notes. The --</p> <p>7 I'm not saying that Marvel was a financially</p> <p>8 distressed organization before the signing of the</p> <p>9 holding company notes.</p> <p>10 Q. And you are --</p> <p>11 A. I'm also not saying that -- I'm also not</p> <p>12 saying that Marvel did not suffer economic</p> <p>13 distress.</p> <p>14 Q. And what -- that last statement, what do</p> <p>15 you mean by that?</p> <p>16 A. It is a recognized concept that</p> <p>17 companies can suffer economic distress, which means</p> <p>18 that business is poor or there's some exogenous</p> <p>19 shock that causes expected earnings to be far less</p> <p>20 than -- to be far less, and there to be general</p> <p>21 business downturns. And that is what I would call</p> <p>22 economic distress.</p> <p>23 It is a recognized concept that,</p> <p>24 separate and apart from economic distress,</p> <p>25 companies can suffer from financial distress, that</p>	<p style="text-align: right;">Page 205</p> <p>1 Baliban</p> <p>2 indenture covenants caused. That's when the teeth</p> <p>3 of those covenants and those restrictions really,</p> <p>4 really sank in.</p> <p>5 So, I'm not sure I understand what he</p> <p>6 means by solely caused. I do believe that the</p> <p>7 financial distress was solely caused by the</p> <p>8 indenture covenants and the financing choices that</p> <p>9 Marvel's board made, in -- because those indenture</p> <p>10 covenants existed.</p> <p>11 Q. Take a look at paragraph 30 of your</p> <p>12 report.</p> <p>13 A. 30?</p> <p>14 Q. Yes, 30. Three, zero.</p> <p>15 A. And this is of my report?</p> <p>16 Q. Of your report, yes.</p> <p>17 A. Okay.</p> <p>18 Q. In paragraph 30 you state in the second</p> <p>19 sentence that, at the preannouncement price of</p> <p>20 \$4.63 a share, Marvel would have needed to buy --</p> <p>21 find a buyer for 75.68 million shares to raise the</p> <p>22 \$350 million.</p> <p>23 Sir, are you offering your opinion that</p> <p>24 in November of 1996 Marvel could have done a public</p> <p>25 offering and raised \$350 million at a price of</p>

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